

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA

Plaintiff,

vs.

No. 19-CR-1155-JAP

DARREN BENALLY,

Defendant.

**DEFENDANT'S MOTION TO DISMISS
FOR LACK OF EVIDENCE TO SUPPORT THE
ELEMENTS OF THE CHARGES IN THE INDICTMENT**

COMES NOW, defendant, Darren Benally, by and through his attorney of record, Amy Sirignano, Esq., of the Law Office of Amy Sirignano, PC, and moves this Court to dismiss the Indictment of Assault Resulting in Substantial Bodily Injury to an Intimate Partner, (Doc. 3) on the basis that the charge lacks sufficient evidentiary support. As grounds for this motion, Mr. Benally asserts the following:

1. On August 15, 2017, Mr. Benally and the alleged victim in this case, B.W, were parked in the Flowing Water Casino parking lot when Mr. Benally allegedly struck B.W. in the face. US v. Darren Benally_004.

2. B.W. was treated at the Northern Navajo Medical Center to treat facial contusions and swelling. US v. Darren Benally_0019-089.

3. B.W.'s medical records from August 15, 2017 show that she reported blurry vision, eye pain, and seeing double. Examination of B.W.'s facial bones showed no fractures, and the physicians determined that B.W.'s eye functioned normally, once examined. US v. Darren Benally_0019-089. Additionally, the note from B.W.'s subsequent visit to Northern Navajo Medical Center on September 22, 2017, reports that B.W. indicated to physicians that the blurry vision and double vision had improved with time. US v. Darren Benally_0019-089.

4. Mr. Benally was indicted April 17, 2019, on a charge of Assault an intimate dating partner resulting in substantial bodily injury in violation of 18 U.S.C. §§ 1153 and 113(a)(7) (Doc. 3).

5. 18 U.S.C. § 113(a)(7) provides, "assault resulting in substantial bodily injury to a spouse or intimate partner [or] a dating partner." 18 U.S.C. § 113(a)(7), in pertinent part. "Substantial bodily injury" is defined as an injury which involves, (A) "a temporary but substantial disfigurement" or (B) "a temporary but substantial loss or impairment of the function of any bodily member, organ, or mental faculty." 18 U.S.C. § 113(b)(1)(A)-(B).

6. No substantial bodily injury exists in this case. The government has no evidence to support a "temporary but substantial disfigurement." No photographs of B.W.'s injuries have been disclosed to defense Counsel, nor are they described in any depth in any report or in B.W.'s medical records. US v. Darren Benally_0007-089.

7. Additionally, B.W.'s medical records indicate that she has suffered no "substantial loss or impairment of the function of any bodily member, organ, or mental faculty." US v. Darren Benally_0019-089. B.W.'s ocular function was not improved.

8. It wasn't until on or about March 29, 2019 did B.W. tell Special Agent Jeffrey T. Wright that Mr. Benally allegedly raped her on or about August 14, 2017. US v. Darren Benally_0859. There are no medical, physical, photographic, audio or contemporaneous evidence of this alleged incident. It is not charged in the Indictment (Doc. 3).

9. Without any evidence of substantial bodily injury, there is no way that the government can meet its burden of proof beyond a reasonable doubt. *United States v. Bryant*, 136 S. Ct. 1954, FN 5 (2016)(The "substantial bodily injury" requirement remains difficult to satisfy, as it requires "a temporary but substantial disfigurement" or "a temporary but substantial loss or impairment of the function of any bodily member, organ or mental faculty."). There is no evidence to support the Indictment (Doc. 3) against Mr. Benally, and thus it should be dismissed.

10. Based on the nature of this motion, it is presumed that the government opposes it.

WHEREFORE, based on the foregoing, Counsel for Mr. Benally moves this Court to dismiss the charge against him (Doc. 3) on the basis that it lacks sufficient evidentiary support.

Respectfully submitted,
Law Office of Amy Sirignano, PC

/s/ electronically filed
AMY SIRIGNANO, ESQ.
5901J Wyoming Blvd., NE #250
Albuquerque, NM 87109
(505) 242-2770
(505) 242-2774 facsimile
amy@abqnmLaw.com

CERTIFICATE OF SERVICE

I hereby certify that this document was electronically filed using the Court's ECF filing system to opposing counsel AUSAs Raquel Ruiz Velez and Joseph Spindle, on this 5th day of July, 2019.

/s/ Electronically Filed

Amy Sirignano, Esq.